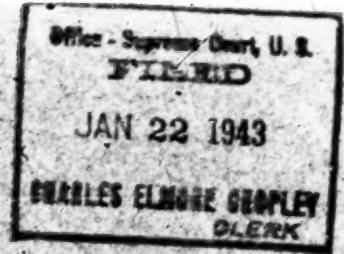




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**No. 319**

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1942**

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**FIDELITY ASSURANCE ASSOCIATION AND CENTRAL  
TRUST COMP'Y, PETITIONERS**

**v.**

**EDGAR B. SIMS ET AL.**

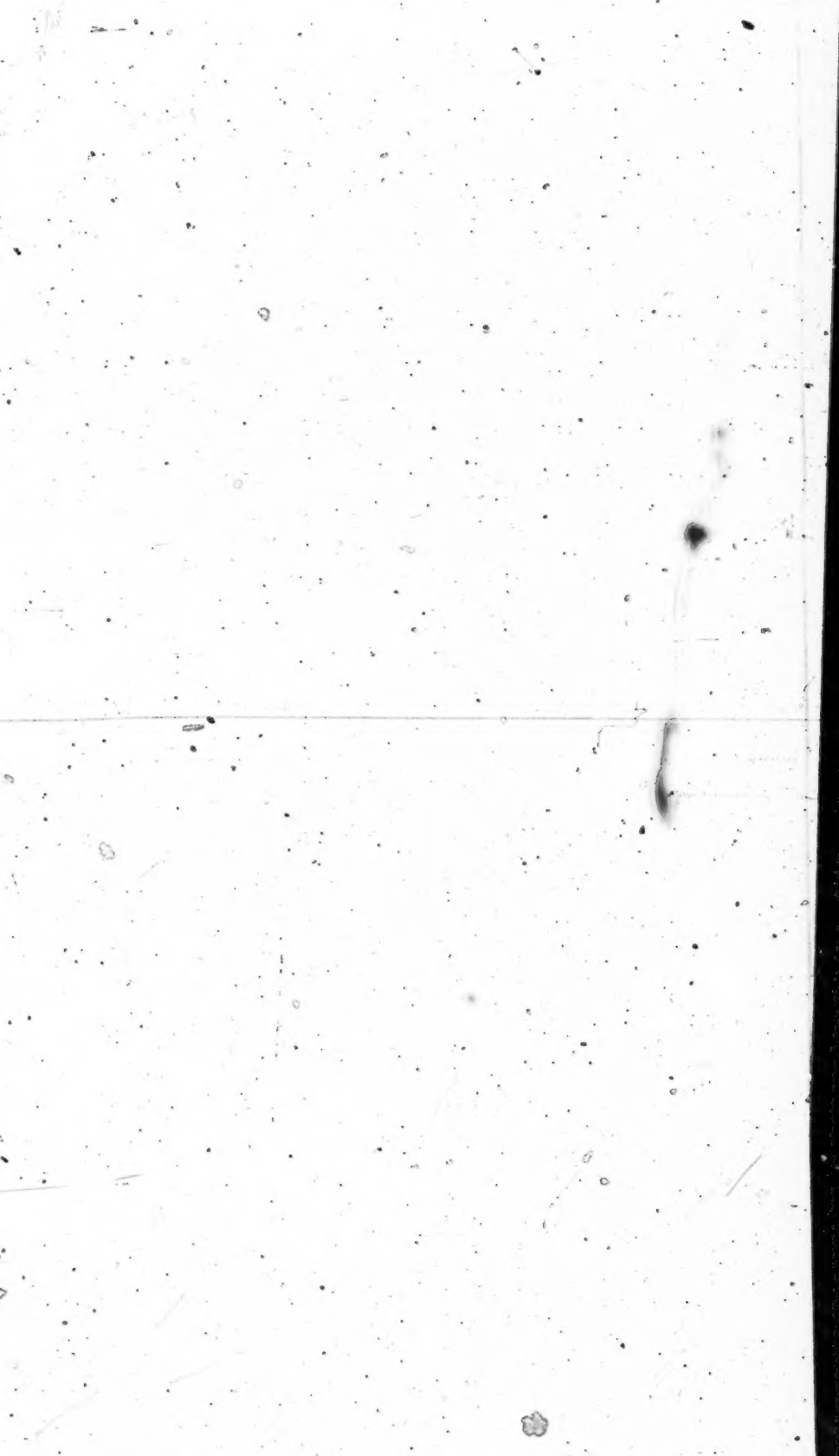
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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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**APPENDICES TO BRIEF FOR THE SECURITIES AND  
EXCHANGE COMMISSION**

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# APPENDIX A

Market value of securities deposited in the various States segregated by series as compared with the net cash surrender liabilities in those States broken down by series

	Income contract	Annuity contract	Series A	Series B	Series C	Series D	General fund	Total
West Virginia:								
Deposits	\$513,253.36	\$2,994,991.37	\$1,737,242.50	\$5,031,608.45		\$671,901.65	\$100,828.75	\$10,674,665.08
Liabilities	127,454.66	672,491.84	453,241.03	916,266.26		12,227.94		2,181,681.75
Wisconsin:								
Deposits		242,380.63	512,429.38	1,804,569.06				2,619,399.07
Liabilities	3,023.59	401,792.98	185,094.95	1,752,557.34	\$509.94	325.85		2,342,978.73
Missouri:								
Deposits	15,187.50	293,360.00	123,534.37	423,988.75				861,100.62
Liabilities	663.84	314,386.56	55,860.28	413,895.93		2,153.75		786,986.56
Delaware:								
Deposits		86,638.75	95,212.50	111,939.38				203,790.63
Liabilities	19,613.34	52,202.67	88,099.12	130,040.73		219.50		290,175.36
Iowa:								
Deposits		35,407.50		9,585.00				45,092.50
Liabilities	1,943.39	16,686.06	10,239.37	5,471.51	138.06			34,478.27
Alabama:								
Deposits	1,196.56	8,832.50	2,213.13	9,311.10		11,071.57		32,555.16
Liabilities	1,078.00	7,885.69	1,429.32	8,775.31		12,178.39		31,346.71
Tennessee:								
Deposits		48,414.38		148,100.00				196,514.38
Liabilities	2,922.07	33,073.73	608.30	103,100.57		739.50		200,504.97
Maryland:								
Deposits		71,187.50	212,733.75	196,885.00				470,806.25
Liabilities	10,605.90	143,132.51	64,971.48	270,974.99		867.46		407,552.24

See footnote at end of table.

Market value of securities deposited in the various States segregated by series as compared with the net cash surrender liabilities in those States broken down by series.—Continued

	Income con- tract	Annuity con- tract	Series A	Series B	Series C	Series D	General fund	Total
Kentucky:								
Deposits		80,000.00						80,712.50
Liabilities	395.65	28,720.56	7,611.25	10,162.16		34,712.50		92,600.43
Kansas:								
Deposits		56,650.00		29,687.46				83,337.50
Liabilities		68,928.25	3,563.00	39,149.64		144.00		108,784.89
Illinois:								
Deposits		512,047.50	508,316.50	2,742,530.00				3,759,894.00
Liabilities	166,707.29	1,178,620.34	553,338.07	2,327,428.44		5,690.61		4,225,790.75
Ohio:								
Deposits		537,772.53						537,772.53
Liabilities	21,694.55		268,031.43	523,589.96		389,932.50	119,640.94	2,390,418.79
Indiana:								
Deposits		66,673.44	51,000.00	42,190.00				159,863.44
Liabilities	4,904.53	63,732.59	27,504.13	288,991.08		1,850.12		396,173.45
Virginia:								
Deposits		27,703.13						27,703.13
Liabilities	9,572.76	201,404.03	92,140.41	254,015.88		1,674.11		557,809.19
Pennsylvania:								
Deposits		121,804.25						121,804.25
Liabilities	159,574.43	1,275,759.16	921,673.03	2,313,779.22		6,790.41	55,908.91	4,668,562.25

Liabilities are stated at cash-surrender values as of Apr. 10, 1941, the day before Fidelity's receivership. These liabilities are based on obligations to present residents of the states. Fidelity's practice was to make deposits on the basis of liabilities to contract holders residing in the various states when the deposits were made (R. 758-759). Thus deposits have been made with respect to contract holders who no longer reside in the particular states, and some contract holders may now reside in states with substantial deposits, but which received little or no deposit with respect to liability to these contract holders. Assets are stated at market values on June 6, 1941, the date of the petition under chapter X.

## APPENDIX B

### *Covering letter and rider circulated by Fidelity in respect of insurance*

1.

Covering letter (R. 218-219)

DECEMBER 31, 1940.

DEAR CONTRACT-OWNER:

It is with pleasure and confidence that we direct your attention to the change in our name and the widening of the scope of our business to that of issuing insurance on the lives of persons. In the future, the company will be known as Fidelity Assurance Association and will offer a complete line of life insurance policies of all types and classes, including life annuities.

These changes enable us, as a qualified legal reserve life insurance company to assume the risks and obligations provided in Section 6 of your contract. As you know, this Section makes available to you insurance covering all monthly payments not yet made in event of your death. Such insurance protection has, in the past, been procured from a legal reserve life insurance company, but was subject to cancellation, upon due notice, at any time. With the making of your regular monthly payments and the Association

assuming the insurance, this condition has been eliminated.

By resolution of the Board of Directors and by the rider enclosed in duplicate, the Association assumes and itself agrees to fulfill and pay the risk and obligations of the insurance policy and of the insurance company mentioned in Section 6 of your contract. The original of the rider is to be signed and attached to your Income Reserve Contract, Series B and the other (the blue one) signed and returned to the Association in the enclosed envelope.

## 2.

## Rider (R. 219)

## FIDELITY ASSURANCE ASSOCIATION

ASSUMPTION OF RISK AND RIDER ATTACHED TO AND A  
PART OF INCOME RESERVE CONTRACT SERIES "B"  
NUMBER

The Association, having so amended its charter as to authorize it to issue insurance upon the lives of persons and every insurance appertaining thereto and to grant and dispose of annuities, and to change its name to Fidelity Assurance Association, in consideration of the monthly payments, provided for in the above numbered contract hereby assumes and does itself hereby agree to fulfill and pay all the risks and obligations of the insurance policy and the insurance company mentioned in Section 6 of said contract.

It is hereby agreed between the Association and the contract holder that this insurance agreement shall become and be a part of said contract and the original shall be attached thereto.

Executed in duplicate at Wheeling, West Virginia this 31st day of December, 1940.

FIDELITY ASSURANCE ASSOCIATION,  
(S) F. S. RISLEY, *President.*

-----  
*Contract Owner.*



## APPENDIX C

### *Summary of allegations in the complaint and affidavits filed by the Commission in its action to enjoin Fidelity from violating the fraud provisions of the Securities Act of 1933 (see n. 21 of Brief)*

The following is a partial summary of the allegations in the complaint and affidavits in the action instituted against Fidelity by the Commission.<sup>1</sup>

1. At least since September 6, 1934, Fidelity has had to devise means of concealing on its books the fact that one of its assets is a worthless indebtedness to it of approximately \$1,000,000 from National Sales Agency, Inc. From August 12, 1913, to September 6, 1934, the latter company had been exclusive sales agent for Fidelity's contracts. It was owned by Fred M. King. The indebtedness in question resulted from this corporation's practice of obtaining large monthly advances from Fidelity in excess of actually earned commissions. On September 6, 1934, Fidelity established its own "Agency Division". National Sales Agency, Inc.,

<sup>1</sup> The summary does not include allegations concerning fraudulent sales tactics by Fidelity's agents (see Report, n. 4 of Brief, pp. 211-218), but relates to allegations concerning Fidelity's financial practices.



thereby lost its only substantial source of income. Its principal assets were unsecured loans to Fred M. King, who was later discharged in bankruptcy. To maintain a semblance of value for the National Sales Agency, Inc., loans and to avoid recognition of the loss, Fidelity's "Agency Division" undertook to perform its sales functions for the account of National Sales Agency, Inc., and the "commissions" so "earned" were credited in payment of the note. (See Report, p. 236.)

2. (a) The National Sales Agency, Inc., note was transferred by Fidelity to two wholly-owned subsidiaries, Paull Company and Marston Corporation, at par.

(b) Fidelity also transferred to Paull Company and Marston Corporation foreclosed real estate and defaulted real estate securities at Fidelity's book carrying value, which was substantially in excess of market values.

(c) Paull Company and Marston Corporation issued to Fidelity their collateral trust bonds in face amount equal to the amounts at which Fidelity had transferred to them the securities referred to in (a) and (b) above.

(d) Fidelity deposited the collateral trust bonds of its subsidiaries with the insurance commissioner of West Virginia at face amount. By this device it was enabled to make deposits, although some of the assets underlying the collateral trust bonds were not acceptable for deposit under the West

Virginia law, and others of the assets were not acceptable for deposit in amounts equal to their book values. (See Report, pp. 206, 228-230, 239.)

3. Fidelity organized another wholly-owned subsidiary, Marietta Corporation, which built Fidelity's home office building. The funds were provided through the purchase by Fidelity of Marietta Corporation's preferred stocks and bonds. Fidelity was thus enabled to carry the bonds and preferred stock of its subsidiary as investments in securities, thereby concealing the fact that it had a large investment in home office real estate. It represented to the public that it had less than \$50,000 worth of real estate investment. (See Report, pp. 207, 231, 232, 240.)

4. Fidelity speculated in the stock market on a margin trading account, using for that purpose monies "borrowed" by its General Fund from specific contract funds. (See Report, p. 241.)

5. Fidelity used the monies of contract funds and of the General Fund to purchase securities in so-called "special situations", in which its officers, directors and members of the investment committee were privately interested, and, in at least one instance, to the personal benefit of officers and directors. (See Report, p. 244.)

6. Fidelity purchased speculative securities at prices substantially below par. Under Sims' system of "sound value" (n. 23 of Brief), those which were not in default were accepted for deposit at

par by the West Virginia Insurance Commissioner. (See Report, p. 240.)

7. By "inter-fund sales" of securities at prices above book value, Fidelity created fictitious paper profits which enabled it to divert money from the various contract funds to the General Fund, and thence to stockholders as dividends. (See Report, pp. 207, 243.)

8. Fidelity's "Special Annuity Fund" had approximately \$400,000 of "gains", representing the difference between the actuarial reserves and the cash surrender values paid out on lapsed Special Annuity contracts. Until 1937, these "gains" had been recognized as being part of the surplus of the Special Annuity Fund, to which contract holders of that fund were entitled when surplus was apportioned. In 1937, Fidelity withdrew this amount from the Special Annuity Fund and credited it to the General Fund, part being allocated to surplus and part being treated as income for the year. In addition to withdrawing the actual amount of these gains, Fidelity charged the Special Annuity Fund with interest at  $4\frac{1}{2}\%$  compounded semi-annually on each item of gain from the time it accrued until the funds were withdrawn. The legal and accounting fees and other expenses paid for computing these gains and interests, amounting to approximately \$7,200, were also charged to the Special Annuity Fund. (See Report, pp. 242-243.)

## APPENDIX D

### STATUTES WITH RESPECT TO DEPOSIT REQUIREMENTS AND TO RECEIVERSHIP AND LIQUIDATION, TOGETHER WITH RELATED TRUST AGREEMENTS

#### ALABAMA

#### *Code (1940) Title 53, Securities*

§ 1. (9878) *Definitions.*—When used in this title the following terms shall, unless the text otherwise indicates, have the following meanings: (1) "Security" shall include any \* \* \* investment contract, income contract (which investment contract or income contract is issued for public offering as one of an issue of several like contracts), annuity contract, unless issued by an insurance company, \* \* \* investment trust debentures, units, shares, bonds and certificates in, for, respecting or based upon any form of securities or collateral, subscriptions and contracts covering or pertaining to the sale or purchase on the installment plan of any security as herein defined; \* \* \* or any right to subscribe to any of the foregoing; or any instrument of any kind commonly known as a security.

§ 9. (9884) *Application for authority to sell filed with commissioner.*—The commissioner shall receive and act upon applications to have securities

admitted to record in such register of qualified securities; \* \* \*

§ 12. (9887) *Hearing on report to commissioner.*—After the report of investigation has been made upon any application, the commissioner shall examine such application and report of investigation, and shall give the applicant a public hearing, if he so desires. (1) If the commissioner shall report favorably to the applicant, he shall issue an order directing that such securities be admitted to record in the register of qualified securities, hereinafter provided for. The commissioner shall keep a permanent record of all its proceedings, findings, judgments and orders. In granting to an applicant the privilege of offering securities to the public in the State of Alabama, the commissioner may impose such reasonable conditions, either precedent, concurrent or subsequent thereto, as in the judgment of the commissioner may be necessary or advisable and may fix a time limit for compliance with such conditions or any of them. As one of such conditions precedent, the commissioner may, in his discretion, require that all or any part of the securities of the issuer, which have been or are to be issued for property or assets, either tangible or intangible, be deposited in escrow under such terms as the commissioner may prescribe. The securities deposited under such escrow agreement shall be released from such escrow agreement only at such time as the com<sup>2</sup>



missioner may deem just and equitable; and in any event such escrowed securities shall be released therefrom when the issuer's earnings shall equal those prescribed by paragraph (j) of section 4<sup>1</sup> of this title for the same class of securities. (2) [Grounds for refusal to admit securities to record in the register of qualified securities]. (3) But, no securities shall be admitted to record in the register of qualified securities until the applicant or applicants therefor have entered into a bond for not less than one thousand dollars, nor more than one hundred thousand dollars, and in no event for more than ten per cent of the aggregate selling price of the securities to be admitted to record. The amount of said bond shall be fixed by the commissioner in his order admitting said securities to record. Said bond shall be payable to the State of Alabama and be conditioned upon the truthfulness of the statements set forth in the application filed with the commissioner and of the written evidence or other probative matter filed with the commissioner in connection with such application and for the faithful compliance by said applicant and his agents with the provisions of this title and of any lawful condition or requirement made by the commissioner in granting such application. Said bond shall be made with a surety company authorized to do business in the State of Alabama and

<sup>1</sup> Section 4 (j) contains earnings and asset coverage tests for different types of securities.

shall be filed with and approved by the commissioner. Any original purchaser of such securities or other person injured by a breach of any condition in said bond shall have a right of action upon said bond for the amount of damages suffered thereby, but such right of action shall be barred unless suit be instituted thereon within one year from the time such cause of action arises. One or more recoveries upon such bond shall not vitiate the same; but no recoveries thereon shall ever exceed the full amount of such bond. Upon suits being filed in excess of the amount of such bond, the commissioner shall require a new bond, and if same is not filed with and approved by the commissioner within thirty days thereafter, the commissioner shall revoke the registration of the securities involved. All liability upon any such bond shall be extinguished upon the expiration of one year from the date of the last original sale by the issuer, or his agent, of any of the securities registered and authorized to be sold pursuant to the application on account of which such bond has been required by the commissioner.

§ 16. (9891) *Powers of commissioner to enforce provisions of Alabama securities law: examination and examiners: revocation of registration of securities. \* \* \**

(3) The commissioner shall revoke the registration of any security by entering an order to that effect, with his findings in respect thereto, if upon



examination into the affairs of the issuer of such security as provided by subdivision (2) hereof it shall appear to the commissioner, and he shall find (a) that the assets of any issuer, whose securities have been granted registration in the register of qualified securities, are impaired to such an extent that such assets do not equal seventy percent of its total liabilities, including its total stock liabilities reckoned upon the price at which such stock has been sold by such issuer to, or subscribed for by, the subscribers thereto; or (b) that the issuer has violated any of the provisions of this title or any orders of the commissioner or any term or terms thereof; or has failed to comply with any condition or conditions contained in any order of the commissioner within the time limit therein prescribed; or (c) that the issuer has been or is engaged or is about to engage in a fraudulent transaction or fraudulent transactions relating to or in connection with the sale of any securities; or (d) that the issuer is in any other way dishonest or has made any fraudulent representation or representations in any prospectus or in any circular or other advertising or literature that has been distributed concerning the issuer or its securities; or (e) that the issuer is insolvent; or (f) that said issuer has declared or paid dividends out of anything except the net earnings of said issuer actually received or accrued at the time of the declaration thereof, or out of accumulated surplus. \* \* \*

*Collateral Trust Agreement*

This agreement made this 23 day of March, 1939, by and between Fidelity Investment Association, \* \* \* party of the first part, and the First National Bank of Montgomery, \* \* \* authorized to do a trust business in the State of Alabama, hereinafter referred to as the Trustee, party of the second part.

*Witnesseth*

WHEREAS, the Association has issued and sold pursuant to applications heretofore received from residents of the State of Alabama, certain certificates and contracts in form and substance in accordance with exhibits filed with the Securities Commission of Alabama, constituting all forms of contracts or certificates heretofore issued and sold.

And, whereas, the Association is now authorized to accept applications from residents of the State of Alabama, for its contracts and certificates, in form and substance in accordance with exhibits filed with the Securities Commission of Alabama.

And, whereas, the Association agrees to keep and maintain securities in the manner and to the extent hereinafter provided, and said Trustee agrees to accept and hold in trust said securities under the terms and conditions hereinafter set out:

Now THEREFORE, in consideration of the premises, it is agreed as follows:

## ARTICLE I

That in order to further secure the contract and certificate holders of the Association whose contract and/or certificates have been issued and sold, and are to be sold by the Association to residents of the State of Alabama, and in consideration of the sum of Five Dollars (\$5.00), paid by the Trustee to the Association at or upon the delivery of these presents, the receipt whereof is hereby acknowledged, the Association has assigned and transferred and by these presents does assign and transfer to the Trustee, certain securities as herein-after defined.

TO HAVE AND TO HOLD, in trust, for the holders of all contracts and all certificates issued and to be issued by the Association to residents of Alabama, and in accordance with the terms and conditions herein provided, the trust securities transferred and assigned and to be transferred and assigned to the Trustee, under the provisions of this agreement, shall constitute a separate and exclusive trust fund for the holders of the contracts and certificates, and for none other, and shall not be available to general creditors nor to any creditors of the Association, except as provided herein.

The securities, as the term is used herein, shall constitute the trust fund, and shall consist of: (1) cash, (2) bonds of the State of Alabama, (3) U. S. Government bonds, (4) bonds or debentures guar-

anted or secured both as to principal and interest by the United States Government; (5) mortgage and deeds of trust insured by the Federal Housing Administrator under the provisions of the National Housing Act as the same is now in force or as the same may hereafter be amended, and (6) first mortgages on improved real estate located within the State of Alabama which improved real estate shall have been first appraised and valued by the Alabama Securities Commission or its agent and approved as to title by Alabama attorneys selected by the Securities Commission of Alabama. In no event shall the value of first mortgages on improved Alabama real estate exceed the appraised value placed on the property covered by such mortgage by an appraiser selected and designated by the Alabama Securities Commission.

The Association covenants and agrees that the contracts and certificates mentioned above constitute all forms of contracts and certificates issued by the Association prior to the date of this trust agreement, pursuant to applications from residents of Alabama, and that the spirit of this agreement is that it shall also cover all contracts and certificates issued in the future.

Except as provided hereinabove in this article (subsection 6) for the purposes of this agreement, the trust securities assigned and to be assigned shall have the following value:

The value of promissory notes representing obligations secured by duly recorded first mortgages, or first deeds of trust on improved real property, shall be the unpaid balances thereon, less all payments made on account of principal and interest, and plus accrued and unpaid interest thereon.

The value of all government bonds, government debentures, and state bonds, shall be the purchase price of such bonds, or debentures, that is, the cost to the Fidelity Investment Association of such bonds or debentures, provided, all bonds or debentures in the trust fund shall be purchased at the current-market price (on the date of purchase), and the said price shall be reported to the State Securities Commission at the time such bonds are transferred by the Association to the Trustee.

The total value of the securities held in trust by the Trustee shall be not less at any time than the liability of the Association upon all the certificates and contracts issued by the Association to residents of the State of Alabama, and the first installment of securities placed with and transferred to the Trustee shall be in amount not less than \$21,988.96 as shown by the statement heretofore filed by the Association with the State Securities Commission of Alabama.

## ARTICLE II

## [Provision for delivery of supplemental documents of title]

When transferred and assigned to the Trustee, the securities and related papers and documents shall be held by the Trustee subject to the provisions of Article VI and other applicable provisions of this trust agreement, so long as liability of any kind on the part of the Association exists, upon any of the contracts or certificates issued or to be issued or sold to residents of the State of Alabama. It is not the intention of this agreement to require the Association to transfer to the Trustee at any time securities in amount and value in excess of the amount and value provided on page three of Article I hereof. Substitution of and withdrawal of securities shall be done in the manner provided hereinbelow.

Interest coupons, if any, shall be surrendered by the Trustee to the Association on written request of the Association, not more than fifteen (15) days prior to their respective maturities.

## ARTICLE VI

If either of the following events hereinafter called "events of default", shall happen, that is to say:

[Specification of "events of default"]



Then, on the happening of either event, except default number three, specially provided for in this Article (VI) hereinbelow, the State Securities Commission shall demand and shall receive from the Trustee the securities transferred under this

trust agreement without court action of any kind.

The Association and the Trustee hereby agree that upon the happening or occurrence of either event, except event number three,<sup>2</sup> the Trustee will deliver the securities held hereunder to the State Securities Commission, upon written demand to the Trustee, pointing out the default, and the fact that notice of such default has been given as required hereunder, and it is agreed that the State Securities Commission shall forthwith administer and liquidate the securities received from the Trustee, for the benefit of Alabama investors, irrespective of the rights of any Trustee in Bankruptcy or Receiver for the Association. It is the intention of this instrument that in the event of the happening of either of the defaults enumerated in this Article (except number three), the State Securities Com-

<sup>2</sup> Event of default number three is as follows:

"(3) Should the Association fail in any of its covenants and agreements contained in this trust agreement and should said default continue for a period of fifteen (15) days, after notice in writing from the State Securities Commission or Trustee to the Association, calling attention to such default or defaults. (See special provision of Article VI.) : or,"

[Signatures]



mission shall take possession of the securities held by the Trustee under this agreement, and administer and liquidate the same, to the extent necessary to insure full protection for the Alabama investors, and independently of any rights of a Trustee in Bankruptcy or any receiver for the Association. The State Securities Commission is also hereby expressly given the right to administer and liquidate the securities received from the Trustee, for the benefit of all of the Alabama contract holders of the Association, as an adverse claimant, within the meaning of the Bankruptcy Act. If, however, the default should occur under subsection three of this Article (Article VI), then and in that event the State Securities Commission shall select \$10,000 in value and amount of such securities, as a penalty for the failure on the part of the Association to carry out the terms of this trust agreement, and the State Securities Commission shall reduce such securities to cash and place the same in the general fund of the Alabama State Treasury, to the credit of the State Securities Commission, and such money shall be used by the State Securities Commission for carrying on, administering and enforcing the securities laws of the State of Alabama. But such penalty shall not be exacted until the Circuit Court of Montgomery County, Alabama, in a proper suit, has decided that the Association has failed, after due notice, to comply with the covenants and agreements contained in this trust agreement.

*Revised Code (1935) ch. 66, art. 7—Banks, Savings,  
Societies and Trust Companies*

*Receiving Deposits or Payments on Income  
Contracts, Certificates or Bonds*

2360. SEC. 103. *Unlawful to Solicit or Receive Deposits or Payments on Income Contract, &c.; Without License From State Bank Commissioner; Not to Apply to Certain Business:—*No person, co-partnership, association or corporation shall engage in the business of soliciting or receiving deposits or payments on any income contract, annuity contract or certificate, or annuity bond, in fixed and stipulated installments, within this State, without first having obtained from the State Bank Commissioner a license to do business in this State. \* \* \*

2362. SEC. 105. *Deposit Must Be Made With State Bank Commissioner Before License is Issued; Amount of Deposit; Additional Deposit May Be Required:—*Before any license to engage in the business described in the first clause of Section 103 hereof shall be issued the State Bank Commissioner shall require the applicant for such license to deposit with the State Bank Commissioner, in trust, for the benefit of its contract holders (or if such applicant be a non-resident person, co-partnership or association, or a foreign corporation, then for the benefit of its contract holders resident

in the State of Delaware) interest-bearing bonds or other income-producing securities, satisfactory to the State Bank Commissioner, to the market value of one hundred thousand dollars (\$100,000.00); provided, that if at any time the State Bank Commissioner shall, in his discretion, determine that such deposit is insufficient for the protection of the contract holders, having regard to the obligations of the licensee, such licensee shall, on demand of the State Bank Commissioner, forthwith deposit with him such additional securities as he shall require, not exceeding in amount one hundred percent of its obligations (or if such licensee be a non-resident of this State or a foreign corporation, then it shall deposit with him such additional securities as he shall require not exceeding one hundred percent of its obligations to contract holders resident in the State of Delaware).

Should any person, co-partnership, association or corporation to whom such license shall have been granted cease, for any reason or cause whatever, to do business in this State, such deposit or deposits shall be returned to such licensee; provided, however, that retention may be made of a portion of said deposits, equal to obligations or liabilities outstanding to contract holders, until the State Bank Commissioner shall have been satisfied, by such evidence as he shall deem sufficient, that all obligations to contract holders shall have been fully paid and discharged (or, if such licensee be a non-

resident of this State or a foreign corporation, then that all obligations to contract holders resident in this State shall have been fully paid and discharged). \* \* \*

2363. SEC. 106. *State Bank Commissioner to Examine Affairs of All Licensees; Commissioner Shall Have Like Authority As in Case of Banks, &c; Copies of Books, &c.; May Be Required, When; Expenses to Be Paid by Licensee:*—The State Bank Commissioner shall, at least once in every year, examine the affairs of all persons, co-partnerships, associations and corporations to whom he shall have issued a license to do business under this Article, and shall certify to such licensee so examined the result of such examination. \* \* \*

2365. SEC. 108. *Upon Failure to Comply With Provisions, State Bank Commissioner May Revoke License After Five Days Notice to Licensee:*—Upon the failure of any person, firm, association or corporation to whom a license shall have been issued under Section 103 hereof, to comply with any of the provisions of this Article, or if the State Bank Commissioner shall determine that the affairs of any such person, firm, association or corporation are in an unsound condition financially, the State Bank Commissioner is authorized to revoke or suspend the license theretofore granted by him to such a person, co-partnership, association or corporation, provided, however, that not less than five days' notice has been given said licensee

of such intended revocation, and opportunity for hearing afforded.

ILLINOIS

*Jones Illinois Statutes Annotated (1942  
Cumulative Supplement, Volume 2)*

SECTION 13.07. *Investment Contracts Defined—  
Liquidation of Securities by Secretary of State.*

§ 6a. \* \* \* No such investment contracts shall be sold or issued in this State unless the issuer shall deposit and maintain with the Secretary of State of this State, for the benefit of the holders of such investment contracts a deposit of securities in which life insurance companies organized under the laws of this State are permitted to invest their funds in an amount not less than fifty thousand dollars (\$50,000), and at no time less than the issuer's current contract liability on all such outstanding investment contracts as defined therein, heretofore or hereafter sold in the State of Illinois, \* \* \* The State Treasurer of this State shall hold as custodian for the Secretary of State, the securities deposited with the Secretary of State for the benefit of the holders of the investment contracts coming within the provisions of this Section 6a.

Upon the insolvency of the issuer or appointment of a receiver or trustee in bankruptcy, the Secretary of State or his successors in office may apply to the Circuit Court of Sangamon County,

or any other court of competent jurisdiction, for authority to proceed with the liquidation of such securities held for the benefit of the holders of such contracts in his office. The Secretary of State is hereby authorized to deal with such securities on deposit in this State for the benefit of the holders of such investment contracts, in his name, or, if the Court shall so order, in the name of the issuer. The Secretary of State may, subject to the approval of the Court, sell or otherwise dispose of the securities so deposited or any part thereof. He shall as soon as may be conveniently possible, give notice by publication as provided by law, and as the Court may direct, to all contract holders who may have claims against the issuer under such investment contracts and for whose benefit such deposit is held, to file and prove their claims in the manner and within the time the Court shall direct. In order to preserve so far as possible the rights and interests of the holders of contracts of such issuer sold in Illinois, he may liquidate such securities on deposit in this State by entering into contracts with any issuer or person able to buy such securities in whole, or in part. Upon receiving an offer or offers for the purchase of such securities in whole, or in part, the Secretary of State shall submit such offer or offers to the court, and if, after a full hearing upon the petition filed by the Secretary of State, the court shall find that the Secretary of State endeavored to obtain the



best contract price for the benefit of said contract holders, and if the court shall find that the best contract price in the interests of said contract holders has been obtained, and that it is for the best interests of said holders of such contracts that such securities be sold, the court shall, by written order, approve the acts of the Secretary of State and authorize him to dispose of such securities. Upon the conversion of such securities to cash, the Secretary of State may then proceed to dispose of the sum received for such securities among the respective holders of such contracts as their interest may appear. Upon the liquidation and distribution of such funds, the Secretary of State may make proper application to the court for final approval of his action in the liquidation of such securities and the distribution or disposition thereof or of the proceeds therefrom as herein provided. \* \* \*

#### INDIANA

*Burns Indiana Statutes (1933) Volume 6, Chapter 38—Foreign Investment Companies*

25-3801 (8032). *License required.*—It shall be unlawful for any corporation, association or society organized under the laws of any state (other than the state of Indiana), or of any government foreign to the government of the United States, to conduct or engage in the business of a trust or investment company for the purpose of issuing its



stocks, bonds, contracts or agreements to its members or other persons, upon which payments are to be made in instalments, or for the purpose of receiving deposits or payments of money for any purpose, without first procuring a certificate of authority from the auditor of state, which certificate shall be renewed annually.

25-3803 (8034). *Deposit of Securities.*—Every such corporation, association or society, before the auditor of state shall issue his authority to do business, shall deposit with said auditor of state stocks or bonds, approved by said auditor, in a sum not less than twenty-five thousand dollars (\$25,000), which amount shall remain in possession of said auditor for and during the first year that said corporation, association or society shall do business. At end of said first year, said corporation, association or society shall deposit with said auditor of state stocks or bonds approved by said auditor equal to the amount of its liabilities to citizens of this state and shall keep such deposit at all times equal to such liabilities.

25-3804 (8035). *Revoking authority.*—Any time such corporation, association or society, shall fail to make such deposit, as required by section three (§ 25-3803), or shall become insolvent or fail to carry out its contracts or agreements with citizens of this state, then said auditor of state shall revoke its authority to do business in said state, and shall ask the proper court of this state to

appoint a receiver to take charge of such deposit for the benefit of its creditors in said state.

*Note:* Sections 25-3801, 25-3813 were repealed by Acts 1935, ch. 179, § 18. Acts 1935, ch. 179, § 18 was repealed by Acts 1937, ch. 120 § 23.

## IOWA

### *Code (1939) Chapter 392, Sale of Stock on Installment Plan*

8517. *Terms defined.*— \* \* \* The term "stock" shall mean \* \* \* or other investment securities or agreements of any kind or character issued upon the partial payment or installment plan.

8521. *Bonds or securities deposited.*—Before any association shall be authorized to transact business contemplated by this chapter, it shall deposit with the commissioner of insurance a bond approved by the commissioner of insurance, guaranteeing the faithful performance of all contracts entered into by such association or securities of the kind designated in subsections 1, 2, 3, 4, and 5 of section 8737,<sup>a</sup> or such other securities as shall be approved by the commissioner of insurance in the amount of twenty-five thousand dollars, which amount shall remain in possession of the commissioner of insurance until the end of the calendar year in which the association shall first be author-

<sup>a</sup> Section 8737 lists certain types of permissible securities for investment of life insurance company funds.

ized to transact business. At the end of such calendar year, such association shall deposit with the commissioner of insurance securities of the kind above provided in an amount equal to all its liabilities to persons residing within this state and shall keep such deposit at all times equal to such liability; provided that at no time shall such deposit be reduced below twenty-five thousand dollars except at such time as such association shall be by law closing out its business and its liabilities shall have been reduced below twenty-five thousand dollars.

8520. *Annual report.*— \* \* \* If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority authorizing it to transact business within the state until the first day of March of the following year. If at any time it shall appear that such association is doing an unsafe business or is insolvent the commissioner of insurance may revoke its certificate of authority to transact business and having revoked the certificate of authority of an association organized under the laws of this state, he shall report his action to the attorney general who shall at once apply to the district court or a judge thereof for the appointment of a receiver to close up the affairs of such association, and an injunction may issue in the same proceeding enjoining and restraining the association from transacting business in this state.

*Corrick's General Statutes Annotated (1935) Ch.  
17, Art. 10*

17-1033. *Foreign associations permitted to do business in state; certificate of authority, prerequisites.*—Foreign building and loan associations doing business in this state shall conduct their business in this state in accordance with the laws of the state governing domestic associations, and no such association shall do any business in this state until it shall procure from the bank commissioner a certificate of authority to do so. To procure such authority, such association shall comply with the following provisions: 1st. It shall deposit with the bank commissioner fifty thousand dollars, either in cash or in bonds of the United States or of the state of Kansas, or of some county or municipal corporation in the state of Kansas, of par value, which has never defaulted upon its interest, or it may enter into a bond annually to the state of Kansas, to be approved by the bank commissioner, for the benefit of the parties doing business with said association, in the sum of fifty thousand dollars, with ten or more sureties, to be approved by the bank commissioner, or with an approved surety company as surety, conditioned for the performance of its subsequent contracts with its members in this state. \* \* \*

17-1037. *Securities liable for claims; release.*—The deposit made with the bank commissioner shall

be held as security for all claims of residents of this state against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same, in the same manner as the property of other nonresidents. Should any association cease to do business in this state, the bank commissioner may release securities, in his discretion, after one year's notice of the fact, retaining sufficient to satisfy all outstanding liabilities:

• 17-1047. *Construction of term "building and loan associations"; submission of bylaws and plans for approval; penalty for failure to comply.*—That the term building and loan association, as used in the statutes of Kansas, shall be construed to include: \* \* \* *Second*, corporations, associations, companies, copartnerships and individuals transacting the business of issuing or selling bonds, debentures, certificates, shares of stock or other papers by whatever name said instruments may be designated, whether said instruments are issued for money paid in advance or for money to be paid in instalments, but with an intent either implied or expressed, that the proceeds or accumulated installments thereof and thereon or any part thereof are to be withdrawable or repayable with accumulated profits at some future fixed or indefinite date or maturity; *Provided*, That all payments made in advance or in installments, or otherwise, on any of the foregoing instruments shall be subject to the

same provisions for withdrawal or repayment as payments on building and loan association stock. All of the laws and regulations prescribed by the statutes of this state for the government and regulation of the business and affairs of building and loan associations shall apply to all such corporations, associations, companies, copartnerships and individuals. All such concerns shall come within the supervisory jurisdiction of the building and loan supervisor, and be subject to examination and supervision as provided by the laws of the state of Kansas for building and loan associations. All such corporations, associations, companies, copartnerships or individuals, who have not already done so, shall submit their bylaws and plans for the transaction of business to the bank commissioner of the state of Kansas for his approval within thirty days from the passage of this act, and from and after said date such corporation, association, company, copartnership or individual shall not transact any business until their bylaws and plans of doing business are approved by the bank commissioner. \* \* \*

17-1032. *Insolvency; receiver; special deputy, bond.*—If upon examination of such association made by the building and loan supervisor or his deputy, or from any report made to the supervisor, it shall appear that any such association is insolvent, it shall be the duty of the supervisor, with the approval of the bank commissioner, to immediately



take charge of such association, its business and all property and effects thereof. Upon taking charge of any such association, the supervisor shall as soon as possible ascertain by thorough examination into its affairs, its actual condition. And whenever he shall become satisfied that such association cannot resume business or liquidate its indebtedness to the satisfaction of all its creditors, he shall report the fact of its insolvency and condition to the attorney general, who shall immediately upon the receipt of such notice, institute proper proceedings in the proper court for the purpose of having a receiver appointed to take charge of such association, and to wind up the affairs and business thereof for the benefit of its creditors and stockholders. The supervisor may appoint a special deputy to take charge of the affairs of an insolvent association temporarily until a receiver is appointed. Such deputy shall qualify, give bond and receive compensation the same as a regular deputy; such compensation to be paid by such association or allowed by the court as costs of the appointment of a receiver: *Provided*, That in no case shall any association continue in charge of such special deputy for a longer period than sixty days.

#### KENTUCKY

*Carroll's Kentucky Statutes Annotated (Baldwin's 1936 Revision) Ch. 72a, Art. 1*

§ 2223a-1. *Reserve fund to be provided; deposit with state treasurer; statement to be filed.*—Every

corporation of the character generally known as investment companies, organized, or which may be hereafter organized, under the laws of Kentucky, for the purpose of conducting the business of placing or selling certificates, bonds, debentures, certificates of interest, or other investment securities of any kind, on the partial payment, installment or any other plan of payment, and providing for the redemption and retirement of same, or any part thereof, and every company, partnership or association conducting such business in this state shall provide a reserve and redemption fund of not less than seventy-five percent (75%) of amount collected in premiums, for the benefit and protection of its investors, and so much of said fund as shall not be immediately distributed to investors shall be invested as hereinafter provided, and every such company, corporation, partnership, association or individual now doing such business in this state within ninety days after the passage of this act shall deposit with the state treasurer the total amount of its paid-up capital stock, and if said paid-up capital stock shall not amount to fifteen thousand dollars (\$15,000.00), shall deposit in addition thereto enough of the reserve fund to make fifteen thousand dollars (\$15,000.00), in cash, or in [List of approved investments]. Said fund so deposited shall be for the protection of investors in such certificates, debentures and other investment securities, wherever residing. Said company, corporation, partnership

or association shall within ninety days after the passage of this act also file with the treasurer of the Commonwealth a statement verified by its president and secretary, showing its assets and liabilities as fixed herein, its income for the preceding twelve months, the total amount passed to its reserve fund now on hand, the number of certificates or parts of certificates redeemed or paid, and the amount of money used therefor. And at the same time such corporation, company, partnership or association shall deposit with the treasurer in cash, or in bonds or such other securities as hereinbefore provided for, the amount passed to the reserve fund, as shown by said statement, which deposit shall be made each year until the total amount of the deposit with the treasurer shall be of the actual value of one hundred thousand dollars (\$100,000.00).

§ 2223a-2. *License to do business; when to issue.*— \* \* \*

§ 2223a-9. *Examination of company; when to be declared insolvent.*—The governor of the Commonwealth of Kentucky shall have the power, at any time that he may deem proper, to appoint expert accountants at the expense of any company, corporation, partnership or association operating under provisions of this act, to make an examination of its affairs, and if it shall be ascertained by said expert accountants that any company, corporation, partnership or association operating under

the provisions of this act shall not have assets sufficient to equal in value the reserve fund contributed by every contract in force, plus the interest at three and one-half percent ( $3\frac{1}{2}\%$ ) per annum compounded annually, said company shall be declared insolvent and its license revoked.

§ 2223a-10. *Conditions upon which it may begin business; retaliatory laws; deposits with treasurer.*—Every such corporation, company, partnership or association organized under the laws of any other state, which shall have made deposit with the proper authority of such state, or of any other state of the United States, either in cash or in acceptable securities, for the benefit and protection of all its investors, wherever residing, or which shall comply with the laws of this state upon the following conditions, to-wit: It shall file with the secretary of state of this Commonwealth a certified copy of its charter or articles of incorporation and a statement giving the location of its office or offices in this state and the name or names of its agents upon whom process can be served; and shall file with the treasurer a certificate from the proper authorities of the state in which it may have been organized, or had made such deposit, showing that the deposit aforesaid has been made; such corporation shall also, on or before the fifteenth day of January in each year, make an annual statement as required by this act, which shall be published as aforesaid; and shall furnish to the treasurer a

certificate from the proper officer of the state where it shall have been organized or have made such deposit, showing that the deposit herein required of companies organized under the laws of this state for the preceding year has been made with the authorities of such state for the protection of its investors; and upon so doing, it shall be entitled to a renewal of its license for one year from the expiration of that already held by it \* \* \* and provided further, that where any such corporation, company, partnership or association organized in any other state shall have made a deposit in any other state of the United States for the protection of holders of its certificates, bonds, debentures, certificates of interest or other investment securities, wherever residing, less in amount than that required by the laws of this state, it shall, before doing business in this state, file a certificate of such deposit as herein required, and shall deposit an amount with the treasurer of this state which, together with the amount so deposited in such other state, shall make up the total amount required by this act to be deposited by said companies in this state; and provided, that when, by the laws of any other state, any such company shall have been required to make, and shall have made, a deposit in such state for the security of holders of its certificates, bonds, debentures, certificates of interest, or other investment securities in such state alone said company shall not be required to make a deposit in this state of its reserved fund

accruing from its certificates, bonds, debentures, certificates of interest, or other investment securities which, under the laws of such other states, are secured by special deposit in such state, and the holders of said bonds shall not be entitled to the benefit of the securities deposited with the treasurer of this state under this act.

### *Agreement*

THIS AGREEMENT, made and entered into this 5th day of November, 1935, by and between FIDELITY INVESTMENT ASSOCIATION, \* \* \* as party of the first part, and the FARMERS DEPOSIT BANK, of Frankfort, Kentucky, a corporation duly organized and existing under the laws of the State of Kentucky, party of the second part:

### *Witnesseth*

WHEREAS it is necessary, in compliance with the requirements of the Securities Department of the State of Kentucky, for the purpose of doing business therein by the party of the first part, that certain deposits of securities be made and subject to the approval of the Securities Commissioner of the aforesaid State of Kentucky; and

WHEREAS, it would be more convenient and advantageous to the party of the first part to make deposit of securities with the party of the second part to the satisfaction of such regulation; and with the consent and approval of the said Securities



Commissioner of the State of Kentucky, now, therefore,

IT IS AGREED that the party of the second part shall entertain and undertake custodianship of said securities, as more particularly described in Schedule "A" attached hereto and made a part hereof, in the total sum of \$10,000.00 face amount, and any additional amounts which may hereafter and from time to time be deposited hereunder, such securities being a part of the Special Fund created by the Fidelity Investment Association for the specific purpose of maturing and/or paying the amounts due or to become due, under the terms of the Income Reserve Contract, Series "D". It being understood and agreed between the parties hereto that any and all such securities so deposited hereunder, and the coupons pertaining thereto, shall be held for the Securities Commissioner of the State of Kentucky, and shall be delivered to the party of the first part only under the advice and directions of the Securities Commissioner by written order addressed to said second party. \* \* \*

[Signatures]

The foregoing agreement for deposit and custody of securities is consented to and approved this 12th day of November, 1935.

EVELYN C. CLIFTON,

*Securities Commissioner, State of Kentucky.*

[Supplementary Agreement dated November 2, 1938, is immaterial for present purposes]

## MARYLAND

*Flack's Annotated Code, Volume 2—Article 48 A—  
Installment Accumulation Contracts*

219. (*Licenses.*) No company shall hereafter engage or continue, either directly or indirectly, in the business of issuing, negotiating, offering for sale or selling any contract payable on the installment plan, with or without definite maturity dates, which contracts contemplate the accumulating of money or funds for making loans or investments and undertaking or agreeing to pay or deliver at any future time any sum of money, contract, or other thing of value, without first having obtained a license as provided in this sub-title.

222. (*Deposits Required.*) No company licensed under the provisions of this sub-title shall at any time offer, negotiate, or sell contracts in the State of Maryland, unless and until such company shall have assigned to and deposited with the Treasurer of the State of Maryland or with some independent bank or trust company approved by the Insurance Commissioner, in trust, as security for all the holders of contracts or other obligations heretofore or hereafter sold, negotiated, issued or accrued in said company in the State of Maryland, bonds, coin or treasury notes of the United States of America, or interest or dividend paying bonds or stocks of this or any other State of the United States or of any county, incorporated city or other

corporation of this or any other State having legal authority to issue the same and not in default, or other securities approved by the Commissioner, having a market value of not less than \$25,000, and at no time less than the aggregate contract liability of the company under all contracts heretofore or hereafter sold in the State of Maryland; provided, however, that all such securities shall have been approved in writing by the Insurance Commissioner before the same are deposited with the Treasurer of the State of Maryland or with such independent bank or trust company, and further provided that in the case of a non-resident company which shall annually produce a certificate of the insurance commissioner or other proper financial officer of the State in which such company is organized, setting forth that such company has deposited with him securities having a market value of not less than \$25,000 and not less than the aggregate contract liability of the company to the holders of all contracts or other obligations heretofore or hereafter sold, negotiated, issued or accrued by said company in the United States, and that he holds said deposit in trust and on deposit, under and by the laws of the State in which he resides for the benefit of all the contract holders of such company in the United States, and that he is satisfied that the securities so deposited by such company and held by him are worth not less than \$25,000 and not less than the aggregate contract liability of

the company to the holders of all contracts or other obligations heretofore or hereafter sold, negotiated, issued or accrued by said company in the United States, then in such case such company shall be excused from making the deposit hereinbefore required. When the value of said securities shall depreciate so that the market value of the deposit shall be less than hereinbefore required, additional securities shall be deposited in order that the deposit shall at all times be maintained in the amount of not less than that hereinbefore required.

229. (*Liquidation of Insolvent or Illegally Conducted Companies.*) Whenever the Commissioner shall have reason to believe that any company is insolvent, fraudulently conducted, or that its assets are not sufficient for carrying on the business of the same, or during any non-compliance with the provisions of this sub-title, it shall be his duty in addition to revoking the license of such company, to proceed against it as provided by Sections 52 to 63, both inclusive, of this Article, for the liquidation of insolvent or fraudulently conducted insurance companies.

52. (*Liquidation of Insolvent or Illegally Conducted Companies.*) Whenever the Insurance Commissioner shall have reason to believe that any insurance company doing business in this State is insolvent, or fraudulently conducted, or that its assets are not sufficient for carrying on the business

of the same, or during any non-compliance with the provisions of this Article, it shall be his duty to forthwith cause proper proceedings to be instituted in the name of the State of Maryland against any such company in a court of competent jurisdiction, for the purpose of obtaining an injunction suspending the business of said company and having the said court assume jurisdiction over the property and business of said company for final liquidation, and the court in which said proceeding is instituted shall be authorized to appoint the Insurance Commissioner or the Deputy Insurance Commissioner, Receiver of such company, provided, however, that no such Receiver shall receive any additional compensation for his services as Receiver, but shall be allowed clerical, traveling and legal expenses, subject to the court's order, and shall furnish such bond as the court may require.

64. The Commissioner may, subject to the approval of the court, sell or otherwise dispose of the real and personal property of the company, or any part thereof, or any interest therein, or any other assets of the company against which a proceeding is pending under Section 54 of this Article, and may sell or compound all doubtful or uncollectible debts or claims owing to such company, including but not limited to claims based upon assessments levied against members of mutual insurance companies.

## MISSOURI

*Revised Statutes 1929, Ch. 32, Article 13—Bond Investment Companies*

§ 5060. *Bond Investment Companies Required to Deposit Cash or Bonds With State Treasurer to Protect Investors.*—Every corporation doing business in this state as a bond investment company, or company to place and sell bonds, certificates or debentures on the partial payment or installment plan, shall and the same is hereby required to deposit with the state treasurer, in cash, United States or Missouri state bonds, or bonds of any county, municipal township or school bonds, or mortgage bonds secured by deeds of trust on unencumbered real estate which, together with the improvements thereon, shall be worth at least double the amount of said notes, or such parts of each of the above mentioned securities, so that the whole deposit will be equal to the sum of one hundred thousand dollars, and whenever the liabilities of such bonds, certificates or debentures in force on the books of the company shall exceed the sum of one hundred thousand dollars, said company shall make an additional deposit on the first day of January and July of each year a sum sufficient in amount to cover the excess liabilities accrued during the preceding six months, for the protection of the investors in such bonds, certificates or debentures.



§ 5063. *Receiver, how appointed—powers and duties.*—In case of the failure of any company covered by this article, the circuit court of the county or city in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts and distribute its assets, using therefor, upon the order of the court, the deposit previously made, to secure the shareholders, with the state treasurer, and the state treasurer is hereby authorized to pay out such deposit in accordance with requisitions made upon the state auditor by said receiver and approved by the court, upon the warrant of the state auditor.

§ 5065. *Attorney-general shall conduct proceedings—fees.*—Proceedings instituted under the provisions of this article shall be conducted by the attorney-general of the state, and in the name of the state of Missouri as plaintiff, at the relation of said supervisor. . The jurisdiction of the circuit court and processes, pleadings and proceedings had in the cases instituted under this article, shall be the same as are now provided by law for the winding up and dissolution of insurance companies, so far as such provisions of law are applicable. \* \* \*

In reference to insurance companies § 5937 provides:

*Distribution of deposits.*—Whenever any company has been or shall be adjudged insolvent,

or shall be or has been dissolved, if a distribution of its assets among its policyholders and creditors is or shall be decreed, it shall be the duty of the superintendent of the insurance department to hold all securities on deposit for the benefit of all policyholders in such company, whether the claims of such policyholders are in judgment or not, to reduce such securities to money, and when so reduced, to apply the same, less the expenses herein provided for, to the liquidation of policy claims pro rata; in case there should be any surplus after the payment of all policy claims in full, such surplus shall become a part of the general assets of the company. If the policy claimants are not paid in full out of the proceeds of said securities, they shall be entitled to share in the distribution of its general assets for the remainder of their claims, as is provided by this chapter, and as to said remainder shall not be charged with the amount received by them on their policy claims out of the proceeds of said securities: *Provided, however,* that when said securities have been deposited to secure registered policies or annuity bonds, as provided by this chapter, the proceeds of the securities so deposited shall be first applied to the payment of the registered policies and annuity bonds, for the security of which the same were deposited. \* \* \*

*Note:* Article 13, Chapter 32 of the Revised Statutes of Missouri of 1929 was repealed by Laws 1941, page 328, effective ninety days after July 12.

*Memorandum of Agreement*

THIS MEMORANDUM, made this 7th day of September, 1932, by and between Fidelity Investment Association, party of the first part, and Dollar Savings and Trust Company, party of the second part, both parties hereto being corporations chartered, organized, and existing under the laws of the State of West Virginia, with principal offices in the City of Wheeling, West Virginia.

*WITNESSETH*

WHEREAS, it is necessary, in compliance with the statutory law of the State of Missouri for the purpose of doing business therein by party of the first part, that certain deposits of securities be made with and subject to the approval of the Security Commissioner of aforesaid State of Missouri; and

WHEREAS, it would be more convenient and advantageous to party of the first part to make such deposits with party of the second part to the satisfaction of such statutory requirements and regulations, and with the consent and approval of the said Security Commissioner, now, therefore,

It is agreed that party of the second part shall entertain and undertake custodianship of said securities in total sum of three hundred and three thousand dollars (\$303,000.), the property of party of the first part, holding same for the Security Commissioner of the State of Missouri, upon and

under his advice and directions by written order to deliver said securities and/or coupons; \* \* \* to permit the substitution or change of securities, and to accept additional securities, all of which to be done upon written order of said Security Commissioner.

\*       \*       \*       \*       \*

[Signatures]

The foregoing Agreement for deposit and custody of securities is consented to and approved this 15th day of September, 1932.

(S) F. T. STOCKARD,  
*Security Commissioner State of Missouri.*

[Supplementary Agreement of February 22, 1938  
is immaterial for present purposes]

#### OHIO

*Page's Ohio General Code—Annotated, Volume 1,  
Chapter 2b: Supervisor of Bond Investment  
Companies*

SEC. 698. *Deposit with treasurer of state.*—Before doing business in this state, every bond investment company shall deposit with the treasurer of state one hundred thousand dollars in cash or bonds of the United States or of the state of Ohio, or of any county or municipal corporation in Ohio, for the protection of investors in the securities of such company. Such deposit shall be made out of the

paid-up capital stock of such bond investment company.

**SEC. 699. Purpose of such deposit.**—The deposit made by a bond investment company with the treasurer of state shall be held as security for all claims of residents of this state against such company, and shall be liable for all judgments and decrees thereon, and subject to the payment of such decrees in the same manner as the property of other non-residents. If such company ceases to do business in this state, the treasurer of state may release securities, in his discretion, retaining sufficient to satisfy all outstanding liabilities.

**SEC. 699-1. Deposits required of foreign bond investment companies \* \* \*.**—In addition to the deposits mentioned in the next two preceding sections, each such company \* \* \* shall deposit with the supervisor of bond investment companies, securities or assets \* \* \* in an amount equal to the cash surrender value \* \* \* on all contracts entered into on and after the effective date of this act by such companies with persons resident in the state of Ohio, and such bond investment companies are hereby required to maintain such deposits in such amounts as are equal to such contract liabilities.

\* \* \* \*

All deposits required under this section shall be held by the supervisor of bond investment companies for the protection and benefit of their contract holders who are residents of Ohio.

SEC. 628-30. *Special deposit claims.*—The owners of special deposit claims against an insurer for which a receiver has been appointed in a delinquency proceeding in this or any other state shall be given priority against their several special deposits, in accordance with the provisions of the statutes requiring the creation and maintenance of such special deposits. If there be a deficiency in any such special deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received a smaller percentage from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from such special deposit, it being the purpose and intent of this provision to equalize to this extent the advantage gained by the security provided by such special deposits.

SEC. 628-32. *Liquidation, etc., of special deposit and secured claims; surplus.*—The ancillary receiver of assets in this state of insurers domiciliary in other states and subject to delinquency proceedings therein shall, as soon as practicable, arrange the liquidation or other disposition of special deposit claims and secured claims proved in the ancillary proceedings in this state, and all remaining assets, after payment of expenses, he shall promptly transfer to the domiciliary receiver.



SEC. 641. *Sale and distribution of securities of defaulting companies.*—If any company, corporation, or association required by law to make a deposit with the superintendent of insurance, or other state officer, to secure the contracts of such company, corporation, or association, or for any other purpose, fails to pay any of its liabilities upon such contracts, or other obligations, according to the terms thereof after the liability thereon has been determined, or if such company, corporation, or association, having ceased to do business within this state, leaves unpaid any such liability or has become insolvent, the attorney general of the state, on behalf of the superintendent of insurance, or such other officer, and upon the application of any person entitled to participate in such deposit, or the proceeds arising therefrom, shall commence a civil action in the court of common pleas of Franklin county, making the company, corporation, or association, a party defendant, to determine the rights of all parties claiming any interest in such deposit, to subject the deposit to the payment or satisfaction of all liabilities and to distribute such fund among the persons entitled thereto.

#### PENNSYLVANIA

*Purdon's Statutes Annotated (Permanent Edition 1939), Ch. 28.*

§ 782. *License required of certain corporations, etc., doing certain business.*—After the first day of October, one thousand nine hundred and twenty-

one, no corporation or person shall, whether or not operating under a declaration of trust or other agreement, engage or continue, either directly or indirectly, in the business, within this Commonwealth, of receiving single payments, regular installment payments, or contributions to be held or used in any plan of accumulation or investment, or of issuing, negotiating, offering for sale, or selling any contract on the partial payment or installment plan, or of assuming fixed obligations, or issuing, in connection therewith, a contract based upon payments being made upon installments or single payment, under which all or part of the total amount received is to be repaid at some future time, either with or without profit, unless such corporation or person is licensed to transact such business within this Commonwealth by the commission in the manner hereinafter provided.

§ 783. *Application for license; investigation; refusal or revocation of license.*—Every corporation or person, desiring to obtain a license under the provisions of this act, shall file with the commission, an application in writing in such form as may be prescribed by the commission. \* \* \*

§ 784. *Deposit of security.*—No corporation or person shall be licensed under the provisions of this act unless and until it has deposited with the commission in cash or bonds of the United States or of the State of Pennsylvania or of cities, counties, boroughs, or school districts of this Commonwealth, or any other state of the United States,

approved by the commission, of the clear market value of one hundred thousand dollars (\$100,000), as security for the fulfillment of its contracts made heretofore or hereafter with residents of Pennsylvania. \* \* \*

§ 787. *Additional security.*—The commission may require every corporation or person licensed under the provisions of this act to set apart a fund, no portion of which shall be applied to the expense of such corporation or person, which shall consist of not less than ten per centum of the amount designated in each contract issued as applicable to the payment of the expenses of conducting the business of such corporation or person. Such fund shall be invested at the close of each calendar year, or oftener if the commission may require, in bonds of the character described in section four of this act,<sup>4</sup> and forthwith deposited with the commission, in the same manner and under the same terms as prescribed by said section, as additional security for the fulfillment of its contracts, provided such corporations<sup>5</sup> or person may deposit cash with the commission in lieu of securities.

§ 789. *Discontinuance of business.*—Whenever any corporation or person licensed under the provisions of this act shall desire to discontinue with this Commonwealth the business of the nature hereinbefore set forth and described, it may make appli-

<sup>4</sup> Section 784 of this title. [Editor's note.]

<sup>5</sup> Probably should be "corporation." [Editor's note.]

eration by petition to the court of common pleas of Dauphin County, setting forth its resources and liabilities within and without this Commonwealth, and particularly an itemized and complete list of the holders or owners of the outstanding contracts issued by such corporation or person, together with the last known address of such holders or owners, and, in each case, the total amount of the liability of such corporation or person thereon, if any, and thereupon the said court, after due hearing, of which the commission shall have such notice as the court may determine, may make such order as will permit the withdrawal of said cash or bonds deposited with the commission, or a part thereof, and will, at the same time, fully protect the rights of all persons owning or holding the contracts issued by such corporation or person.

#### TENNESSEE

*Williams' Code Annotated (1934), Volume 4,  
Chapter 4*

§ 6057 (3273a122). Statements and documents to be filed with the commissioner before transacting business; filing fee; deposit of securities.

Provided, however, that if the securities offered or to be offered for sale in Tennessee be of the class known as "investment contracts", comprising the following: investment contracts, or annuity contracts other than those of qualified insurance com-

panies, or installment investment certificates, or securities of like kind, which contemplate that the issuer shall pay or deliver, or whereby the issuer agrees to pay or deliver, either absolutely or conditionally, to the purchaser or holder of the contract, certificate, bond or like security, a sum of money at a future time, either with or without interest, in consideration of a payment or payments made or contemplated to be made by such purchaser or holder, which securities are hereinafter referred to as investment contracts; the investment company, or issuer, domestic or foreign, upon written request of the commissioner of insurance and banking of this state, shall deposit and maintain with the said commissioner, for the benefit of the holders of such investment contracts, a deposit of securities in cash or its equivalent; but the commissioner of insurance and banking may, in his discretion, accept as said equivalent, such securities as domestic life insurance companies are permitted to invest their funds in under section 6204 as amended of the official Code of Tennessee, in amount not less than \$10,000 and at no time less than 100% of the issuer's cash or current contract liability on all such outstanding investment contracts, as defined herein, sold in the State of Tennessee. The commissioner of insurance and banking of this state shall hold as custodian the securities deposited for the benefit of the holders of the investment contracts coming within the provisions of this section:

§ 6068 (3273a132). *Attorney-general shall apply for receiver, etc., when.*—Whenever it shall appear to the said commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardizing the interests of its stockholders or investors in stocks, bonds, or other securities by it offered for sale; or whenever any investment company shall fail or refuse to file any papers, statements, or documents required by this chapter, without giving satisfactory reason therefor, said commissioner shall at once communicate such facts to the attorney-general, who shall thereupon apply to the chancery court in the district where such company is located or is doing business or to a chancellor of said court for the appointment of a receiver to take charge of and wind up the business of such investment company; and if such fact or facts be made to appear, it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

#### VIRGINIA

*Code of 1942 (Annotated) Chapter 147A, Title 34A, Blue Sky Laws*

§ 3848 (49). *To what securities applicable.*—(i) Shares, participations, rights or interests, by what-



soever name or term designated or described, in investment trusts and/or in any enterprise or project having the essential characteristics of what is commonly known as an investment trust, whether under the English or American theory or plan, and by whatsoever term or name known or called, and also the securities thereof for capital purposes.

§ 3848 (51). *Information and fees required of promoters; conditions precedent to offering securities for sale; bond required.*—(r) In any case the

commission shall have the right to require of any promoter either before or after granting an authorization, or license, for the sale of securities, or land, a bond, the form whereof shall be prescribed and the surety approved by the commission, penalty whereof shall be fixed by the commission at not more than twenty per centum of the sales price of the securities or land proposed or authorized to be sold. The said bond shall be with surety and payable to the Commonwealth, condition that the facts set forth in the application for such authorization, or license, and in all other documents required by this act to be filed with the commission are true, and that the provisions of this act shall be strictly complied with, and that all moneys from the sale of such securities or land will be used for the proper purpose or purposes as set forth in the subscription contract and/or in the security sold and in the papers filed with the com-

mission; and that the contract of the promoter as set forth in subscription and/or in the securities issued will be complied with. Except when the surety offered is a surety company authorized to do business in this State, it shall be the duty of the commission to satisfy itself that such surety is amply solvent before accepting the same; provided that the commission may, in its discretion, permit some other form or method of giving the security contemplated by this provision in lieu of requiring a bond as provided.

§ 3848 (60). *Suits on bond*.—Any person who shall be induced to purchase any securities or land, such as are designated in section three [3848 (49)] of this act, by any promoter, by reason of any misrepresentation of any material fact concerning such securities or land, contained in said application or other documents submitted in connection therewith or furnished to the commission, upon its request, or in any other written or printed matter issued or used by said promoter or its or his agents in making such sale, or shall have suffered loss by reason of the fact that moneys paid by him to the promoter of such securities or land or to the promoter's agent, have not been applied to the proper purpose of the promoter as set forth in the subscription contract, the security sold, or the papers filed with the commission, or that the promoter has failed or refused to comply with his contract as set forth in the subscription contract and/or in the certificate or other evidence of the security issued

or land sold, shall have the right to bring action upon the bond provided for by this act or under any substitute agreement approved by the commission in pursuance of provisions of this act, and such bond or duly approved substitute therefor shall be security for such person for his losses; but such person shall not be entitled to recover more than the money paid, or the actual value of the property given, or the labor performed, in exchange for such securities or land, with legal interest from the date of the payment or the performance of the services or the transfer of the property. One or more recoveries shall not vitiate the bond or substitute therefor, but same shall remain in full force and effect, but no recoveries shall ever exceed the full amount of such bond or substitute therefor, and upon actions being commenced in excess of the amount of same, the commission may require a new bond, or substitute therefor, and if the same is not given or effected within thirty days, the commission may revoke the permit herein provided for, provided, however, that any suit or action instituted under this section shall be commenced within two years from the date of any such sale by such promoter or its or his agents.

#### *Agreement*

WHEREAS the Fidelity Investment Association has executed a certain bond dated August 8th, 1932, under the provisions of the Virginia Securities Law: and

WHEREAS, in lieu of sureties upon said Bond, the Association desires to deposit certain securities with a trust as security for the faithful performance by it of all its obligations under said bond; and

WHEREAS, under the said law the State Corporation Commission of Virginia may approve some form or method of giving security other than requiring a bond with sureties;

NOW, THEREFORE, be it mutually agreed between the Fidelity Investment Association, a corporation organized and existing under the laws of the State of West Virginia, as party of the first part; and the State-Planters Bank and Trust Company of Richmond, a corporation organized and existing under the laws of the State of Virginia, Trustee, as party of the second part, as follows:

1. The party of the first part agrees to deposit with the party of the second part, as trustee, \$25,000 United States Treasury Bonds, 3 $\frac{1}{8}$ %s June 15, 1949, but upon the specific trust and condition that said securities are deposited as security for the faithful performance by the party of the first part of its several undertakings under the above mentioned bond, only.

2. If the party of the first part ceases to carry on business in the State of Virginia, and its liabilities, whether fixed or contingent, as mentioned herein, shall have been satisfied, or shall have terminated, upon satisfactory evidence of the fact the

State Corporation Commission of Virginia shall direct the party of the second part to deliver to the party of the first part the securities of said party in its possession, or, if there be contingent obligations outstanding the said Commission shall direct the delivery of the amount of securities over and above the amount necessary to take care of said contingent obligations, should they be legally established.

3. If the said party of the first part fails to perform any of its obligations for which it has executed its bond, and has failed to pay the liability arising therefrom after the same shall have been ascertained by any agreement between the party of the first part and the party to whom it may be incurred, binding upon the party of the first part, or by judgment, order, or decree of a court of competent jurisdiction of the State of Virginia against the party of the first part, not appealed from, superseded or stayed, the party of the second part shall, upon the application of any person to whom the liability is due, proceed to sell at auction such an amount of the aforesaid securities as will pay the sum due and the expense of sale, and out of the proceeds of sale pay said sum and expenses.

8. The party of the second part further agrees that the said securities will not be taken beyond the boundaries of this State, and will not be turned

over to the party of the first part without the consent of the State Corporation Commission of Virginia.

\* \* \* \*

[Signatures]

Approved: STATE CORPORATION COMMISSION.

By THOS. W. OZLIN.

WEST VIRGINIA

*Code of 1937—Annotated—Chapter 33, Article 9  
(Annuity Contracts)*

SECTION 3446 (SEC. 1). *License from Insurance Commissioner Prerequisite to Engaging in Business.*—No person, association or corporation shall engage in the business of soliciting or receiving deposits or payments on any annuity contract or certificate or annuity bond in fixed and stipulated installments, within this State, without first having obtained from the insurance commissioner a license to do business in this State: \* \* \*

SECTION 3448 (SEC. 3). *Deposits to be Made with the Treasurer.*—Before a license to transact business in this State shall be issued by the insurance commissioner to any person, association, or corporation within the purview of section one (§ 3446) of this article, the insurance commissioner shall require the applicant to deposit with the state treasurer (in accordance with article five, chapter twelve of this code), in trust, for the benefit of its



contract holders, bonds of the state of West Virginia, or such other bonds, and securities including bonds issued by the West Virginia bridge commission as may be approved by said insurance commissioner, or both, to the aggregate amount of one hundred thousand dollars, and, in addition to such deposit, such person, association or corporation shall maintain at all times a deposit with the state treasurer of bonds and securities approved by the insurance commissioner to an amount equal to the total amount which such person, association or corporation may be liable to pay in cash to the holders of all contracts under the terms thereof at the time of the deposit: Provided, That when, by the laws of any other state, any such person, association or corporation shall have been required to make and shall have made such deposit in such state, equal or greater in amount for the benefit of contract holders in such state, upon the filing of a certificate to such effect from the proper officer in such state with the insurance commissioner of this State, such person, association or corporation shall not be required to make such deposit with the treasurer of this State for the benefit of its contract holders in such other state; and when the laws of any other state require such deposit less in amount, such person, association or corporation shall file a certificate from the proper officer in such state with the insurance commissioner of this State showing the amount of the deposit made, and shall deposit

with the treasurer of this State an amount which, together with the deposit made in such other state, shall make up the total amount required by this State to be deposited by such person, association or corporation, and such contract holders in such other state shall not be entitled to the benefit of the securities deposited with the treasurer of this State under this article, except so much of such deposit as may be made to complete the total amount required by this article where the law of any other state requires a lesser amount.

The insurance commissioner may require an independent appraisal, at the expense of the company, of any property on which it holds a mortgage or trust deed or any bond or other investment offered by such company for the purpose of complying with the deposit provisions of this article.

SECTION 3450 (SEC. 5). *Revocation of License on Failure to Make Additional Deposits or Insufficiency of Assets.*—On the failure of such person, association or corporation to deposit such additional bonds and securities with the state treasurer when so required by the insurance commissioner, the license to do business in this State shall be revoked by the insurance commissioner. Whenever the insurance commissioner, upon an examination of the affairs of any such person, association or corporation, finds that the liabilities of such person, association or corporation exceed the assets thereof, the insurance commissioner shall suspend

the license of such person, association or corporation until he is satisfied that the assets of such person, association or corporation are increased to exceed such liabilities.

SECTION 3455 (SEC. 10). *Authority of Insurance Commissioner; Control of Deposit Where License Revoked.*—The insurance commissioner shall have the same authority over every person, association, or corporation engaged in selling annuity contracts, certificates, or bonds, as over insurance companies, and if in his opinion the assets are impaired or such person, association or corporation is not complying with the law, said commissioner shall have authority to revoke the license of such person, association, or corporation to do business in this State, and, if such license is so revoked, the deposit or a sufficient amount of same, shall remain under the authority and control of the insurance commissioner until the total liability of all the contracts, certificates or annuity bonds or contracts issued by such person, association or corporation in this State is redeemed or settled.

### *Chapter 33—Article 2*

SECTION 3325 (1) (SEC. 45). *Proceedings in Circuit Court of Kanawha County Against Insolvent Company.*—Whenever any company under the supervision and regulation of the insurance commissioner shall become insolvent or shall be in such financial condition as not to be able to pay its cred-

itors in this State, the commissioner of insurance may file a bill in the circuit court of Kanawha county for the administering of the assets of such company as an insolvent, and for the purpose of taking possession of its property in this State and the distribution of its assets among those entitled thereto according to their respective right.

*Note:* Article 9, Chapter 33 of the Code of West Virginia was repealed by Acts of West Virginia 1941, Chapter 46, March 8, 1941, in effect ninety days thereafter, and a new statute regulating face-amount certificate companies was enacted (W. Va. Code, c. 32, art. 3). Fidelity never qualified under this statute.

#### WISCONSIN

##### *Statutes, Chapter 216, Investment Associations*

216.01 *Regulation.*—No person and no copartnership, association or corporation, whether local or foreign, heretofore organized or which may hereafter be organized, doing business as a so-called investment, loan, benefit, co-operative, home, trust or guarantee company, for the licensing, control and management of which there is no law now in force in this state, and which such person, copartnership, association or corporation, shall solicit payments to be made to himself or itself either in a lump sum, or periodically, or on the instalment plan, issuing therefor so-called bonds, shares, coupons, certificates of membership or other evidences

of obligation or agreement, or pretended agreement to return to the holder or owners thereof money or anything of value at some future date, shall solicit or transact any business in this state unless such person, copartnership, association or corporation, shall have first complied with all the provisions prescribed in chapter 215 of the statutes required of foreign building and loan associations authorized to do business in this state.

216.02. *Laws applicable.*—All provisions of said chapter 215 with respect to the supervision, control and conditions upon which foreign building and loan associations are permitted to do business in this state are hereby made applicable to and imposed upon persons, copartnerships, associations or corporations described in the first section of this act, the same as though they were foreign building and loan associations under said act, so far as such supervision, control and conditions can be made applicable to the particular business done by such persons, copartnerships, associations or corporations.

### *Chapter 215, Building and Loan Associations*

215.38. *Deposit.*—No foreign building and loan association . . . shall issue its shares, receive moneys or transact any business in this state unless such association shall have and keep on deposit with the state treasurer, in trust for the benefit and security of all its members in this state, five hun-



dred thousand dollars to be held in trust as aforesaid until all shares of such association held by residents of this state shall have been fully redeemed and paid off and until its contracts and obligations to persons and members residing in this state shall have been fully performed and discharged; the securities comprising such deposit shall first be approved by the banking commission under the same rules and regulations governing the approval of securities of trust company banks; and upon such deposit being made the state treasurer shall issue a certificate therefor, and thereupon the banking commission may issue its certificate of authority to said association to transact business in this state.

215.395. *Increase of deposit.*—Whenever the commission shall find that the liability of any foreign building and loan association or any foreign investment association on shares or contracts then outstanding or contracted for by members or persons residing in this state, exceeds ninety per cent of the amount of the deposit required by section 215.38 and section 215.39, or exceeds ninety per cent of the amount of the deposit required by such sections and by any order issued under the authority of this section, exclusive in each case, however, of any such liability under any agreement existing, created, regulated or required by the industrial commission under chapter 108 or by any other department, commission or division of state



government under any other provision of law, the commission shall issue an order to such association or corporation requiring such association or corporation to deposit within thirty days with the state treasurer, an additional amount in cash or securities of the class mentioned in section 215.39, or such other securities as the commission shall require and approve. If such order is not complied with within thirty days, the commission shall revoke the certificate of authority issued to such association or corporation.

215.33. *Possession by banking commission.*—

(1) *Conditions for taking possession.*—The banking commission may forthwith take possession and control of the business and property of any association to which this chapter is applicable whenever it shall find that such association:

(a) Is conducting its business contrary to law,  
or

(b) Has violated its charter, or any law, or

(c) Is conducting its business in an unauthorized or unsafe manner, or

(d) Is in an unsound or unsafe condition to transact its business, or

(e) Has an impairment of its capital, or

(f) Cannot with safety and expediency continue business, or

(g) Has suspended payment of its obligations, or

(h) Has neglected or refused to comply with the terms of a duly issued order of the commission, or

(i) Has refused to submit its books, papers, records or affairs for inspection to any examiner, or

(j) Has refused to be examined upon oath regarding its affairs.

(2) *Procedure on taking possession.*—Upon taking possession of the business and property of any such association the banking commission shall forthwith:

(a) Serve a notice in writing upon the president and secretary of said association, setting forth therein that it has taken possession and control of the business and property of said association. Said notice shall be executed in duplicate, and immediately after the same has been served, one of the said notices shall be filed with the clerk of the circuit court of the county where said association is located, together with proof of service.

(b) Give notice to all individuals, partnerships, corporations and associations known to the banking commission to be holding or in possession of any assets of such association.

(c) The banking commission may appoint one or more special deputy commissioners as agent or agents to assist in the duty of liquidation and distribution of the assets of one or more building and loan associations of whose business and property the banking commission shall have taken possession pursuant to the provisions of this chapter. \* \* \*

(d) Upon taking possession of the property and business of such building and loan association, the

special deputy commissioner of banking is authorized to collect all moneys due to such building and loan association, and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided. He shall collect all debts due and claims belonging to it, and upon a petition approved by the banking commission and upon order of the circuit court of the county in which such association is located, may sell or compound all bad or doubtful debts, or do any act or execute any other necessary instruments and upon like petition and order may sell all the real and personal property of such building and loan association on such terms as the court shall approve. Such special deputy commissioner may, if necessary, enforce individual liability of the stockholders to pay the debts of such corporation.

(3) *Notice; allowance and payment of claims.*— [This section provides for notice by advertisement to all persons holding claims to present them to the special deputy commissioner of banking and making legal proof thereof, etc. There is a provision for notice by mail as well.]

(4) *Inventory of assets and statement of liabilities.* \* \* \*

(5) *Adjustment of loans and withdrawal value of shares.*— [This section provides that the banking commissioner may fix the value of all shares subject to the approval of the circuit court of the

county in which the association is located. It likewise provides for appeal by any shareholder to the Supreme Court.]

(10) *Appeal*.—[This section permits the association to apply to the circuit court of Dane County to enjoin further proceedings by the banking commission. A hearing in reference to the matter is provided for.]

(11) *Reinstatement*.—Whenever the banking commission shall have taken over the possession and control of the business and property of any building and loan association, the same may resume business when and if:

(a) The owners of at least two-thirds of such association's dollar value of outstanding shares, execute a petition to such effect, the form of which shall be prescribed by the banking commission, and

(b) There is submitted to the banking commission by such shareholders or a committee duly selected by them, a plan for the reorganization and reinstatement of such association; and

(c) The banking commission recommends that control of the business and property of such association be returned to the shareholders, and

(d) The court in which such liquidation is pending, upon application of the banking commission, makes an order approving the banking commission recommendations, which order shall contain a finding that such association will be in a safe and sound condition when control is resumed by the shareholders.

(12) *Reinstatement Upon Restricted Basis.* Such building and loan association may also resume business upon a restricted basis, and upon such limitations and conditions as may be prescribed by the banking commission when approved by the circuit court in and for the county in which such building and loan association is located, upon application of the banking commission. Such restrictions and conditions may include, among others, a prohibition against the selling of new shares, reasonable restrictions upon withdrawals and the payment of other liabilities. Such association shall thereupon be relieved from the control and supervision of the banking commission as provided in this section, but nothing herein shall, in any manner, prohibit the banking commission from again proceeding against such association as provided herein.



